



Office of the Clerk
 UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
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 Clerk of Court

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August 21, 2006

Notice and Opportunity for Comment on Proposed Amendments to the Circuit Rules

Pursuant to 28 U.S.C. § 2071(b), comments are invited on proposed amendments to the Circuit Rules.

- Circuit Rule 32-2 Motions to Exceed the Page or Type Volume Limitation
- Circuit Rule 40-1 (Note) Petitions for Rehearing

New and/or amended language is bold and highlighted. Comments should be submitted to Cathy A. Catterson, Clerk of Court/Circuit Court Executive, no later than **September 22, 2006.**

CIRCUIT RULE 32-2

MOTIONS TO EXCEED THE PAGE OR TYPE-VOLUME LIMITATION

The court looks with disfavor on motions to exceed the applicable page or type-volume limitations. Such motions will be granted only upon a showing of diligence and substantial need. A motion for permission to exceed the page or type-volume limitations set forth at Fed. R. App. P. 32(a)(7) (A) or (B) must be filed on or before the brief's due date and must be accompanied by a declaration stating in detail the reasons for the motion.

Any such motions shall be accompanied by a single copy of the brief the applicant proposes to file and a Form 8 certification as required by Circuit Rule 32-1 as to the line or word count. The cost of preparing and revising the brief will not be considered by the court in ruling on the motion.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 32-2

If the court does not grant the requested relief or grants the relief only in part, the court ordinarily will provide the party a reasonable interval after the entry of the order to file a brief as directed by the court. **Any order that decides a motion will make adjustments to the due date(s) for any further briefing.**

Purpose of Amendment: The existing note assures the moving party that if the court denies or only grants in part a request for leave to file an overlength brief, the responsive order will provide movant an opportunity to file a brief of the length the court considers appropriate. The note does not memorialize the court's practice of also amending the deadlines for any responsive briefs.

CIRCUIT RULE 40-1

FORMAT; NUMBER OF COPIES

[Previous text abrogated 1/1/99]

(a) Format/Length of Petition and Answer

The format of a petition for panel rehearing or rehearing en banc and any answer shall be governed by Federal Rule of Appellate Procedure 32(c)(2). The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text. An answer, when ordered by the Court, shall comply with the same length limitations as the petition.

If an unrepresented litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Federal Rule of Appellate Procedure 32.

The petition or answer must be accompanied by the completed certificate of compliance found at Form 11. (*New Rule 7/1/2000 - Section A, above.*)

(b) Number of Copies

If a petition for panel rehearing does not include a petition for rehearing *en banc*, an original and 3 copies shall be filed. If a petition for panel rehearing includes a petition for rehearing *en banc*, an original and 50 copies shall be filed.

(c) Copy of Panel Decision

The petition for panel or en banc rehearing shall be accompanied by a copy of the panel's order, memorandum disposition or opinion being challenged. (New 7-1-06)

[Cross Reference Fed. R. App. P. 32, Form of Briefs; Circuit Rule 32-5, Unrepresented Litigants; Circuit Rule 28-1, Briefs, Applicable Rules]

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 40-1

Litigants are reminded that a petition for rehearing en banc must be received by the clerk in San Francisco on the due date. See, Federal Rule of Appellate Procedure 25(a)(1) and (2)(A) and Circuit Rule 25-2; see also, *United States v. James*, 146 F.3d 1183 (9th Cir. 1998). Pursuant to General Order 6.3a, the clerk may grant (1) upon motion or sua sponte, an extension of time of no more than seven (7) calendar days in all cases subject to the 14-day filing period and (2) upon motion, an extension of time of no more than thirty (30) days in direct criminal appeals. (Rev. 12/1/02)

Litigants are also reminded the time limits set forth at Fed. R. App. 40(a)(1) apply only to decisions disposing of the merits of the case or post-briefing dispositive orders. The deadlines prescribed at Ninth Circuit Rule 27-10 (28 days for unrepresented prisoners or detainees; 14 days for all other parties) govern requests for review of orders issued by motions panels, even if the order disposes of the case. (New 7-1-2006)

Purpose of Amendment: Note emphasizes the distinction between Federal Rule of Appellate Procedure 40's due dates for petitions for rehearing and Circuit Rule 27-10's due dates for motions for reconsideration.
